

**Montana Constitution Article III**

**Section 1. Separation of powers.** The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

**Montana Constitution Article VII- THE JUDICIARY**

**Section 1. Judicial power.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

**Section 5. Justices of the peace. (1)** There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

**3-10-103.** County to provide facilities. The board of county commissioners of the county in which the justice of the peace has been elected or appointed:

(1) shall provide for the justice's court:

(a) the office, courtroom, and clerical assistance necessary to enable the justice of the peace and the clerk of justice's court, if any, to conduct business in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of the records and files of the court and the transaction of the business; and

(c) the latest edition of the Montana Code Annotated and all official supplements; and

(2) may provide a clerk of justice's court.

History: En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(1); amd. Sec. 1, Ch. 6, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 6 in (1) at end of introductory clause substituted "justice's court" for "justice of the peace"; in (1)(a) after "enable" substituted "the justice of the peace and the clerk of justice's court, if any, to conduct business" for "him to perform his duties"; in (1)(b) near middle substituted "court" for "judicial office"; inserted (2) allowing for a clerk of justice's court; and made minor changes in style. Amendment effective October 1, 2001.

Cross References:

Veterans' public employment preference, Title 39, ch. 29.

Persons with disabilities public employment preference, Title 39, ch. 30.

**Case Notes:**

Separation of Powers Doctrine Not to Preclude Compliance With Employee Grievance Procedure by Justice's Court: A Justice of the Peace involved in a disciplinary action against the court office manager contended that a grievance hearing before the County Commission would violate the separation of powers doctrine by interfering with the independence of the court by requiring the Justice of the Peace to be an adverse witness against court personnel, allowing the Justice of the Peace's decision on personnel matters to be overruled by another branch of government, and possibly requiring the Justice of the Peace to accept an employee believed to be unsatisfactory. However, as established in *Hillis v. Sullivan*, 48 M 320, 137 P 392 (1913), the hiring by the County Commission of a clerk to assist a court does not violate the separation of powers doctrine. In addition, the County Commission is statutorily required to provide a Justice of the Peace with clerical assistance. Thus, a grievance hearing before the County Commission does not violate the separation of powers doctrine because the County Commission's independent hiring of the office manager is consistent with the doctrine; nor does the County Commission's hearing of the grievance constitute an exercise of authority belonging to the Judicial Branch. *Clark v. Dussault*, 265 M 479, 878 P2d 239, 51 St. Rep. 642 (1994).

Agreement by County Commission to Pay Justice Court Expenses -- Failure to Object -- Appeal Precluded: A Justice of the Peace requested approval of funds from the County Commission for employment of a temporary clerical assistant. The County Commission initially refused to approve the funds. The claim was then submitted for certification pursuant to *Browman v. Wood*, 168 M 341, 543 P2d 184 (1975), and was subsequently certified as an actual and necessary expense incurred in the performance of actual duties of the Justice Court. When the bill was still not paid, the Justice of the Peace filed a petition for a contempt order against the County Commissioners for failure to pay the certified claim. The order was amended to include



attorney fees. The County Commission then agreed to pay the claim and did not oppose the motion to amend, nor did it file a responsive brief. However, it later alleged error. The Supreme Court held that the County Commission waived the right to appeal by agreeing to pay the claim and then failing to object to the District Court order to pay the claim and taking no further action to challenge the claim. In re Certain Justice Court Expenses, 264 M 510, 872 P2d 795, 51 St. Rep. 372 (1994).

Claim of Justice's Court for Unbudgeted Actual and Necessary Expenses: When Justice of Peace filed claim to pay necessary extra clerical assistance, County Commissioners did not have discretion to disallow claim under section 16-1906, R.C.M. 1947 (renumbered 7-6-2323 through 7-6-2325, 7-6-2327, and 7-6-2328, all sections now repealed), as section 93-412, R.C.M. 1947 (now 3-10-103 and 3-10-209), prevailed. **When a specific statute conflicts with a general statute, the specific controls over the general to the extent of any repugnancy.** State ex rel. Browman v. Wood, 168 M 341, 543 P2d 184 (1975). (Annotator's Comment: In this case Supreme Court exercised supervisory powers to provide a procedure to prevent future actual or potential conflict between the Board of County Commissioners and Justice's Courts.)

**Mandamus -- Payment of Clerical Expenses: County Commissioners can be compelled to pay for necessary clerical expenses under this section and 3-10-209 when necessity is shown for the performance of duties. State ex rel. Browman v. Wood, 168 M 341, 543 P2d 184 (1975).**

Attorney General Opinions:

**Duty of Boards of County Commissioners to Accept and Pay Claims for Actual and Necessary Clerical Expenses of Justice's Court: Under this section, a duty is created on the part of Boards of County Commissioners to accept and pay claims for actual and necessary clerical expenses associated with the operation of Justices' Courts. If disputes arise regarding payment of those expenses, the procedural rule in State ex rel. Browman v. Wood, 168 M 341, 543 P2d 184 (1975), applies. Although Boards may have some budgetary discretion when considering payment of actual and necessary court expenses, the statutes governing the county budgeting process do not preclude application of the Browman rule when disputes arise. 49 A.G. Op. 19 (2002).**

Codes Provided: The latest edition of the Revised Codes of Montana (now Montana Code Annotated) and all official supplements thereto must be supplied to each Justice of the Peace in each county. 35 A.G. Op. 93 (1974).

**3-1-111. Powers respecting conduct of business. Every court has power to:**

- (1) preserve and enforce order in its immediate presence;
- (2) enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;
- (3) provide for the orderly conduct of proceedings before it or its officers;
- (4) compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding pending therein;
- (5) control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every other matter appertaining thereto;
- (6) compel the attendance of persons to testify in an action or proceeding pending therein in the cases and manner provided in this code;
- (7) administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers and duties;
- (8) amend and control its process and orders so as to make them conformable to law and justice.

History: En. Sec. 452, p. 134, Bannack Stat.; re-en. Sec. 609, p. 159, Cod. Stat. 1871; re-en. Sec. 529, p. 178, L. 1877; re-en. Sec. 529, 1st Div. Rev. Stat. 1879; re-en. Sec. 546, 1st Div. Comp. Stat. 1887; amd. Sec. 110, C. Civ. Proc. 1895; re-en. Sec. 6292, Rev. C. 1907; re-en. Sec. 8844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 128; re-en. Sec. 8844, R.C.M. 1935; R.C.M. 1947, 93-501.

## **Definition of *NECESSARY***

1

*a* : of an inevitable nature : INESCAPABLE

*b* (1) : logically unavoidable (2) : that cannot be denied without contradiction

*c* : determined or produced by the previous condition of things

*d* : COMPULSORY

2

: absolutely needed : REQUIRED

4



of mandate requiring the Board of County Commissioners to allow and pay the claim. Id. at 344, 543 P.2d at 186.

On appeal the Board of County Commissioners argued that the law vested in them the discretion to approve or disapprove the claim for clerical expenses, rather than imposing a duty on them to act. Browman, 168 Mont. at 345, 543 P.2d at 187. The Court rejected the Board of County Commissioners' claim noting that it failed "to recognize the constitutional and statutory provisions that enable justice courts to incur the actual expenses necessary to function properly as a court of law." Id. The Court held that those constitutional and statutory provisions created a duty on the part of the commissioners to approve and pay the actual and necessary expenses of a justice court. Id.

The Court determined that the Board of County Commissioners' statutory duty to pay clerical expenses arose out of R.C.M. 93-412, which is now codified at Mont. Code Ann. § 3-10-103 and 3-10-209. Browman, 168 Mont. at 345-346, 543 P.2d at 188-189. Because the Court recognized that conflicts between Boards of County Commissioners and Justices of the Peace were bound to occur, it exercised its supervisory power under Mont. Const. article VII, § 2, and adopted a rule to govern such situations.

The Court's adopted rule governs in the case of conflict between a Board of County Commissioners and a Justice of the Peace concerning the funding of court expenses. According to the rule, the Justice of the Peace must submit a claim to the senior district judge of the judicial district in which the county is located in which the Justice of the Peace serves. Browman, 168 Mont. at 346, 543 P.2d at 189. The senior district judge is required to certify the necessity of the expense within ten (10) days of the submission of the claim and to transmit the certification to the Board of County Commissioners with copy to the county attorney. Id. If the senior district judge fails, refuses or neglects to certify the claim within the ten (10) day period, such nonaction is deemed to be a refusal to certify that such claim is an actual and necessary expense incurred or to be incurred by the Justice of the Peace in the performance of the Justice's official duties. Id. The Court held that the senior district judge's certification or refusal to certify such a claim was a condition precedent to any legal action on the claim in any court of this state. Id.

You state in your opinion request that some Boards of County Commissioners contend that the legislature disapproved the rule from Browman, citing the 1979 amendment to Mont. Code Ann. § 3-10-209 to support their contention. Senate Bill 481, enacted as chapter 528, Laws of 1979, amended § 3-10-209 by substituting the phrase "actual and necessary travel expenses" for what had previously simply read "expenses." I do not agree with the argument that the legislature's passage of Senate Bill 481 resulted in a disapproval of the Browman rule.